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Wilhelmus Henricus Maria Van Cuijk

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THE WEBB LAW FIRM, P.C.
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH, PA 15219

EXAMINER

WOMACK, DOMINIQUE A

ART UNIT

PAPER NUMBER

4132

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,649	Applicant(s) VAN CUIJK, WILHELMUS HENRICUS MARIA	
	Examiner DOMINIQUE WOMACK	Art Unit 4132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2005 (Prelim. Amend.).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) 27-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20060222</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 16-26, drawn to a package for containing a plurality of products.

Group II, claim(s) 27-30, drawn to a method for heating a package.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The common technical feature of Groups I and II appears to be a container provided with passage openings wherein the passage openings of the individual compartments differ from each other such that overpressure in individual compartments is maximized at different pressure levels.

3. Claim 16 of Group 1 is anticipated by US Pat No. 4,013,798 to Goltsos. Goltsos discloses a food package with compartments, some of which contain vents. In the event of excess pressure with the compartment, the water vapor will be released into the environment through the vents (col. 1, lines 40-61 & col. 4, lines 12-32). Therefore, there is no special corresponding technical feature among the claim groups of the claimed invention because the corresponding technical feature is not found to define a contribution over the prior art. Furthermore, there is a lack of unity of invention and a restriction requirement is proper.

Art Unit: 4132

4. During a telephone conversation with Attorney John McIlvaine on 11/19/2008 a provisional election was made with traverse to prosecute the invention of Group I, claims 16-26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27-30 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

6. In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained.

Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double

Art Unit: 4132

patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Claim Objections

7. Claim 23 is objected to because of the following informalities: The recitation “and that weakened portions” appears to be a grammatical error. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 16-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Regarding claims 16-26, it is unclear whether the claims relate to a filled package before or after use.

11. Regarding claim 16, it is unclear what is meant by the recitations "separated medium tightly" and “for a medium”.

12. Regarding claims 16 and 18-25, it is unclear whether the recitation “passage openings” is describing holes or blocked holes that have the ability to be opened. It is unclear whether the passage openings are open or necessarily closed.

Art Unit: 4132

13. Regarding claims 16 and 26, the recitation “a plurality of products for heating, in particular food products” renders the claim indefinite because it is unclear whether the claim requires the presence of food products or whether any product can be within the package.

14. Regarding claim 17, it is unclear whether the cover is present or whether the package could be covered. It is also unclear what is meant by the recitation “making use of a material layer”.

15. Regarding claim 19, it is unclear whether all passage openings open at the same temperature.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 16-21 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Goltsos [US Pat No. 4,013,798].

18. Regarding claims 16-18 and 25-26, Goltsos discloses a food package with compartments, some of which contain vents or openings in the container body. The openings are covered with a plastic cover that has a weakened seal portion. In the event of excess pressure within the compartment, the water vapor will be released into the environment through the openings, as the weakened seal portion is released (Fig 2 and 7, #32; col. 1, lines 40-61, col. 4, lines 12-32 & col. 5 lines 21-36). The vents (#32) are blocked by the plastic cover prior to use of the package. It is

Art Unit: 4132

understood that the design of this package allows for each compartment to be maximized at different pressure levels. The weakened seals around the passage openings can be varied, thus varying the pressure at which each compartment can be maximized.

19. Regarding claim 17, Goltsos discloses that the compartmented tray is covered with a transparent plastic film that seals the food within the tray (col. 3, lines 47-55).

20. Regarding claim 19, Goltsos discloses that the openings are vented after an excess of water vapor builds up in the compartments. It is understood that in order for excess water vapor to build up in the compartment, that a certain temperature must be reached within the compartment.

21. Regarding claim 20, the combination of the cover and opening can be considered to be a pressure valve.

22. Regarding claim 21, Goltsos discloses an embodiment where the total passage surface of one compartment (Fig. 2, #22 & 36) is smaller than another compartment (Fig. 2, #24, #36 & #34) (col. 4, lines 32-42).

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 4132

24. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

25. In the alternative, claims 16-18, 20-21, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goltsos [US Pat No. 4,013,798].

26. Regarding claims 16-18 and 25-26, Goltsos discloses a food package with compartments, some of which contain vents or openings in the container body. The openings are covered with a plastic cover that has a weakened seal portion. In the event of excess pressure within the compartment, the water vapor will be released into the environment through the openings, as the weakened seal portion is released (Fig 2 and 7, #32; col. 1, lines 40-61, col. 4, lines 12-32 & col. 5 lines 21-36). The vents (#32) are blocked by the plastic cover prior to use of the package.

27. If Goltsos does not anticipate a package in which different compartments are maximized at different pressure levels, it renders this type of structure obvious.

28. It would have been obvious to one of ordinary skill in the art, at the time of invention, to create a package in which different compartments are maximized at different pressure levels because the design used by Goltsos allows for each compartment to be maximized at different pressure levels. The weakened seals around the passage openings can be varied, thus varying the pressure at which each compartment can be maximized (col. 4, lines 12-18).

Art Unit: 4132

29. Regarding claim 17, Goltsos discloses that the compartmented tray is covered with a transparent plastic film that seals the food within the tray (col. 3, lines 47-55).

30. Regarding claim 20, the combination of the cover and opening can be considered to be a pressure valve.

31. Regarding claim 21, Goltsos discloses an embodiment where the total passage surface of one compartment (Fig. 2, #22 & 36) is smaller than another compartment (Fig. 2, #24, #36 & #34) (col. 4, lines 32-42).

32. Claims 19 (in the alternative) and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goltsos [US Pat No. 4,013,798] in view of Clarke et al. [US Pat No. 6,210,724].

33. Goltsos is relied upon as above with respect to claim 16.

34. Regarding claims 19 and 22-23, Goltsos fails to teach the use of passage openings that are blocked prior to use and open under the influence of a determined temperature being exceeded.

35. Clarke et al. discloses a vent for a sealed package that responds to temperature (col. 1, lines 57-60). The sealed package has an aperture which is covered by a cover unit. The cover unit is attached to the package by way of an adhesive. When the sealed package is exposed to elevated temperatures, the adhesive layer gives way and the cover unit opens, thus venting the package (col. 6, lines 62-67 & col. 7, lines 2-21). Clarke et al. also discloses that this type of cover unit can be used on packages intended to cook foods at high temperatures (col. 5, lines 36-

Art Unit: 4132

38). Clarke et al. discloses that when food is cooked in a sealed package, dangerously high temperatures and pressures are generated within the package (col. 1, lines 53-56).

36. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the temperature responsive cover of Clarke et al. to modify the cover of the sealed food package of Goltsos in order to vent the food package when it reaches a certain temperature. One of ordinary skill in the art would be motivated to vent the food package when it reaches a certain temperature because Clarke et al. teaches that packages should be vented in order to avoid dangerously high temperatures and pressures generated within a sealed package during cooking.

37. Regarding claim 23, Goltsos discloses a cover element that covers multiple passage openings and has weakened portions about those passage openings (Fig. 2, #31).

38. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goltsos [US Pat No. 4,013,798] in view of Hiyoshi [US Pat App No. 2001/0012530].

39. Regarding claim 24, Goltsos fails to teach passage openings in the material layer.

40. Hiyoshi discloses a vent hole in the cover of a packaged food product. This vent hole is covered a hole-sealing sheet which automatically comes off during the heating process because of the increase in pressure within the package ([0006]). Hiyoshi says the type of cover and passage opening employed by Goltsos fails to keep cook food properly because it is weakly attached to the opening and acts as a safe valve for pressure. Early opening of the cover can cause the steam generated by the food to escape too early, before the food is sufficiently heated ([0005] & [0015]).

Art Unit: 4132

41. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to replace the sealed passage openings of Goltsoos with the sealed vents of Hiyoshi in order to provide vents in the cover of the sealed package. One of ordinary skill in the art would be motivated to use this more secure ventilation system because this type of vent prevents uneven heating or drying out of the food because the hole-sealing sheet is released and the hole is vented only after the food is sufficiently heated [0005].

Conclusion

42. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIQUE WOMACK whose telephone number is (571)270-7366. The examiner can normally be reached on Monday-Thursday, 8:00am-5:00pm.

43. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike LaVilla can be reached on 571-272-1539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 4132

44. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W./

D. Womack

Examiner, Art Unit 4132

26 November 2008

/Michael La Villa/

Michael La Villa

Supervisory Patent Examiner, Art Unit 4132

24 November 2008